

FILED
Clerk
District Court

DEC 12 2006

1 For The Northern Mariana Islands
2 By _____
3 (Deputy Clerk)

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6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN MARIANA ISLANDS

9
10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 vs.
13 MING YAN ZHENG,
14 Defendant.

Case No. CR-05-00027-1

15 **NOTICE OF ORDER DENYING DEFENDANT'S
16 POST-TRIAL MOTIONS**

17 **THIS MATTER** came before the court on December 8, 2006, for hearing of defendant's
18 objection to the victims making statements by video conference, defendant's motion for
19 reconsideration, and defendant's second motion for a new trial. The Government appeared by and
20 through its attorney, Assistant U.S. Attorney Timothy E. Moran; defendant appeared personally and
21 by and through her attorney, G. Anthony Long.

22 **THE COURT**, having considered the arguments of the parties,¹ **OVERRULED** defendant's
23 objection to allocution by video conference, **DENIED** defendant's motion for reconsideration, and
24 **DENIED** defendant's second motion for a new trial.

25 **I. STATEMENTS BY VICTIMS BY VIDEO CONFERENCE**

26 Defendant argued that Federal Rule of Criminal Procedure ("Rule 32") requires that the
27 victim must show why he or she cannot attend the sentencing hearing before being permitted to make

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1 a statement by video conference. Rule 32(i)(4)(B) requires that the court allow victims to make
2 statements in person but it does not limit the court on how the victim may appear, if such alternate
3 form of appearance is requested by the victim.

4 Defendant cited to *United States v. Degenhardt*, 405 F.Supp.2d 1341, 1345 (D. Utah 2005),
5 for the proposition that the victim must show why he or she cannot attend the sentencing hearing. In
6 *Degenhardt*, however, the District Court of Utah explained that a victim has a right to be heard at the
7 sentencing hearing and that the court may not require the victim to be heard by writing instead of
8 orally during the hearing. Furthermore, the District Court of Utah suggested in dicta that if the victim
9 could not attend the sentencing hearing, the victim may have a right to be heard by other means.
10 Accordingly, if *Degenhardt* is persuasive, it is for the proposition that the court must allow a victim
11 to be orally heard in person at the sentencing hearing. *Degenhardt*, however, does not consider
12 whether the court, in its discretion, may permit a victim who has requested to appear by an
13 alternative form, to be heard at the sentencing hearing by other means.

14 Here, the court found that good cause supports the victims' request to appear by video
15 conference because the victims are in Guam. Accordingly, considering the technology now available
16 and the court's availability, the court **OVERRULED** defendant's objection.

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18 **II. MOTION FOR RECONSIDERATION**

19 A motion for reconsideration is not available in the District of the Northern Mariana Islands.
20 Instead, such motion may be made as a motion for a new trial under Federal Rule of Criminal
21 Procedure 33 ("Rule 33"). Accordingly, the court **DENIED** defendant's motion for reconsideration.
22 To the extent that it includes argument not contained in defendant's second motion for new trial, the
23 court considered those arguments in connection with defendant's second motion for new trial.

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1 **III. SECOND MOTION FOR NEW TRIAL**

2 “Upon the defendant’s motion, the court may vacate any judgment and grant a new trial if the
3 interest of justice so requires.” Fed. R. Crim. P. 33. Defendant argued that a new trial is proper
4 because new evidence proves that the government provided the court with false impressions, or
5 alternatively, because new evidence proves that the government violated the dictates of *Brady v.*
6 *Maryland*, 373 U.S. 83 (1963).

7 First, defendant argued that despite the fact that the government knew that the Wangs were
8 participants in sex trafficking, the government created the false impression that they were not
9 participants. Defendant asserted that the government knew the Wangs were participants because the
10 government inquired into the possibility of securing a public benefit parole visa but discovered that
11 the Wangs were not eligible for the visa because they were not victims of the sex trafficking charges.
12 This argument, however, assumes that any person who is not considered a victim of a certain sex
13 trafficking charge is necessarily a participant of that sex trafficking charge. Accordingly, this
14 argument is without merit.

15 Second, defendant argued that the government violated the dictates of *Brady* by failing to
16 disclose that it had researched the possibility of securing a public benefit parole visa for the Wangs.

17 Supreme Court cases following *Brady* clearly established that the defendant must prove three
18 elements in order to show a *Brady* violation. First, the evidence at issue must be favorable
19 to the accused, because it is either exculpatory or impeachment material. Second, the
20 evidence must have been suppressed by the [government], either willfully or from failure to
21 disclose the evidence . Third, prejudice must result from the failure to disclose the evidence.
22 Defendant cites to *United Staets v. Benn v. Lambert*, 283 F.3d 1040, 1052-53 (9th Cir. 2002). Defendant cites to *United Staets v.*
23 *Blanco*, 392 F.3d 382, 394 (9th Cir. 2004), for the proposition that the government’s failure to
24 disclose information that the government inquired into the availability of a public benefit parole visa
25 for the Wangs was a *Brady* violation. However, in that case, the witness was actually eligible for a
26 public benefit parole visa and did in fact receive the visa. Here, because the Wangs did not receive
 such benefit, information that the government inquired into the possibility of obtaining such visa is

1 not exculpatory. In addition, in light of the disclosures the government made of information of actual
2 benefits that the Wangs did receive from the government, the information regarding the
3 government's inquiry is not material.

4 **ACCORDINGLY**, for the forgoing reasons, the court **OVERRULED** defendant's objection
5 to the victims making statements by video conference, **DENIED** defendant's motion for
6 reconsideration, and **DENIED** defendant's second motion for a new trial.

7 **IT IS SO ORDERED.**

8 DATED this 12th day of December, 2006.



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10 ALEX R. MUNSON

11 Judge

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